FILE COPY. 31384

OCTOBER TERM, 1902.

No. 661

United States Supreme Court.

Office Supreme Court U. S.
FILED
APR 13 1903
JAMES H. McKENNEY,
Clerk.

WHITAKER WRIGHT,
Appellant,

against

WILLIAM HENKEL, Marshal of the United States for the Southern District of New York,
Appellee.

In the Matter of the Application for the Extradition of
WHITAKER WRIGHT
Under the Treaty between the United States and Great Britain.

AFFIDAVIT AND NOTICE OF MOTION TO ADVANCE CAUSE.

LOUIS MARSHALL,
Attorney for Appellant,
30 BROAD STREET,
New York City.

C. G. Burnham, Walker and Centre Streets, N. Y.

31385

Supreme Court of the United States.

WHITAKER WRIGHT,
Appellant,

AGAINST

WILLIAM HENKEL, Marshal of the United States for the Southern District of New York,
Appellee.

October Term, 1902.

IN THE MATTER

OF

The Application for the Extradition of WHITAKER WRIGHT under the Treaty between the United States and Great Britain.

No.

SIRS: Please take notice that a motion will be made herein before the United States Supreme Court at a session thereof to be held at the Capitol in the City of Washington, D. C., on Monday, the 13th day of April, 1903, at twelve o'clock noon, or as soon thereafter as counsel can be heard, for a rule or

order advancing this cause and setting it down for hearing and argument on a day fixed by the Court.

Dated, New York, April 7th, 1903.

Yours, etc.,

LOUIS MARSHALL,

Attorney for Appellant,

Office & Post-Office Address:

30 Broad Street,

Borough of Manhattan,

New York City.

To WILLIAM HENKEL,

Marshal of the United States for the Southern District of New York.

CHARLES FOX, ESQ.,

Attorney for His Britannic Majesty's Consul-General at the Port of New York.

SUPREME COURT OF THE UNITED STATES.

WHITAKER WRIGHT

AGAINST

WILLIAM HENKEL, Marshal of the United States for the Southern District of New York

IN THE MATTER

OF

The Application for the Extradition of WHITAKER WRIGHT under the Treaty between the United States and Great Britain.

UNITED STATES OF AMERICA
Southern District of New York } ss.

LOUIS MARSHALL, being duly sworn, deposes and says:

I am the attorney for Whitaker Wright, the appellant herein. He is now in the custody of William Henkel, Marshal of the United States for the Southern District of New York, under a warrant of commitment to him issued by one Thomas Alexander, United States Commissioner for the Southern District of New York, upon the complaint of His Britannic Majesty's Consul General at the Port of New York. The complaint and warrant charge the appellant with having committed fraud in England while acting as a director of an English corporation.

Upon his arraignment before the Commissioner an application was made to discharge the applicant on the

ground that the offence charged against him was not an extraditable offence within the meaning of any treaty between the United States of America and the United Kingdom of Great Britain and Ireland, the provision of the said treaty on which the prosecution relies confining the right to extradite on the charge of the commission of fraud by a director of a company to cases where the act "is made criminal by the law of both countries."

This application was denied, and thereupon the appellant asked to be admitted to bail pending an examination into his alledged criminality. This application was denied on the ground that no power of jurisdiction existed to admit one arrested in extradition proceedings to bail.

Writs of *habeas corpus* and *certiorari* were then sued out from the Circuit Court of the United States for the Southern District of New York on the ground that no extraditable crime had been charged against the appellant, and that in any event the appellant should be admitted to bail. After a hearing on said writs the Court dismissed them, holding that the offence charged against the appellant was extraditable and that no jurisdiction or power existed in the United States Circuit Court to admit one arrested in extradition proceedings to bail.

An appeal has been taken from this determination to this Court.

The appellant is still in custody. No hearing on the merits of the charge made against him has as yet taken place, the prosecutor having obtained adjournments of the proceedings to await the arrival of depositions from England; and it has been stated before the Commissioner that other applications for adjournment will in all probability be made from time to time.

The charges made against the appellant are of such a nature as to involve an elaborate and intricate investigation into books of account, and in all likelihood a long time will elapse before such hearing is completed. In the meantime, unless the appellant is

admitted to bail, he will continue in confinement in the County Jail of the County of New York commonly known as Ludlow Street Jail, for an indefinite period.

No indictment has been found against the appellant in England. I am informed and verily believe that the charges now made against him have been considered in the public press of England for more than two years past; were the subject of investigation by the Attorney General and Solicitor General of England, and, in response to interrogations made in the House of Commons by members of Parliament, both the Attorney General and Solicitor General stated that as a result of their investigation into the charges made against the appellant they had come to the conclusion that no crime had been committed by him. Yet he is now subjected to imprisonment and has been denied the right to give bail pending the preliminary investigation into his alleged criminality.

LOUIS MARSHALL.

Subscribed and Sworn to before me this 8th day of April, 1903.

GEO. F. BEHRINGER, JR.
Notary Public,
Rockland Co.
Certf. filed in N. Y. Co.

FILE COPY.

Office Supreme Court U.S.
FILED
APR 25 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States, 1

OCTOBER TERM, 1902.

No. 661.

WHITAKER WRIGHT,
Appellant,

vs.

WILLIAM HENKEL, United States Marshal, Southern District of New York *et al.*

2

3

UNITED STATES OF AMERICA, Southern District of New York, } ss.:

CHARLES FOX, being duly sworn, doth depose and say that he is attorney for Sir Percy Sanderson, His Britannic Majesty's Consul-General, at the Port of New York, in the proceedings for the extradition of the appellant, and has represented him in all the proceedings for the extradition of the above-named appellant.

That on the 31st day of March, 1903, after the entry of the order, by the Circuit Court of the United States for the Southern District of New York, discharging the writs of habeas corpus and certiorari (page 13 of the Record), Sir Percy Sanderson and your deponent appeared before Thomas Alexander, Commissioner in the

4

extradition proceedings, and a complaint was then and there made by Sir Percy Sanderson, a copy of which is as follows:

UNITED STATES OF AMERICA, } ss.:
Southern District of New York,}

PERCY SANDERSON, His Britannic Majesty's Consul-General at the Port of New York, being duly sworn, doth depose and say upon information and belief:

FIRST.—That one Whitaker Wright, did heretofore and in or about the month of October, 1899, and in or about the month of December, 1900, in the City of London, in that part of the United Kingdom of Great Britain and Ireland, called England, and within the jurisdiction of His said Britannic Majesty, commit the crime of fraud as a director of a company, to wit, did heretofore and in or about the month of October, in the year 1899, and in or about the month of December, 1900, at the City of London, aforesaid, then being a director and manager of a certain company or body corporate, to wit, the London and Globe Finance Corporation, Limited, unlawfully make, circulate and publish, and concurred in making, publishing and circulating certain written statements of accounts, viz.: annual reports, balance sheets and statements of accounts of said company or corporation for periods ending on the 30th day of September, in the year 1899, and on the 5th day of December, in the year 1900, which were false, and which he then knew to be false in material particulars, with intent thereby to deceive and defraud members, shareholders and creditors of said company or corporation, and with intent to induce persons to become shareholders in the said company or corporation, and to entrust and advance property to said company or corporation, and to enter into security for the benefit thereof; and did also, at the times and places aforesaid, then being a director and manager of said company or corporation, aforesaid, with intent to defraud, alter and

falsify, books, papers and writings belonging to the said company or corporation, and made and concurred in the making of false entries, and omitted and concurred in omitting material particulars in books of account and other documents belonging to the said company or corporation; and did also at the times and places aforesaid, then being a director of the said company or corporation as aforesaid, alter and falsify books, papers and writings, and made and was privy to the making of false and fraudulent entries in the books of account and other documents belonging to the said company or corporation, with intent to defraud and deceive shareholders and creditors of said company or corporation, and other persons.

SECOND.—That the said Whitaker Wright is a fugitive from the justice of the Kingdom of Great Britain and Ireland, and is now within the territory of the United States.

THIRD.—That the crime of which the said Whitaker Wright is herein charged is an offence within the treaty between the United States and Great Britain, and is made criminal by the laws of both countries.

FOURTH.—That deponent's information and belief are based upon a certified copy of a warrant, issued by one of His Majesty's Justices of the Peace, for the City of London, for the apprehension of the said Whitaker Wright, for the offence herein first enumerated, and a certified copy of the information and complaint of the Senior Official Receiver in Companies Liquidation (acting under the order of the High Court of Justice) and the depositions of Arthur Russell and John Flower, in support thereof, upon the application for a summons against the said Whitaker Wright, and the depositions of George Jarman and Harry Gerald Abrahams, on which information and complaint and depositions, the said warrant was granted for the apprehension of the

13 said Whitaker Wright, all of said certified copies of warrant, information and complaint and depositions being certified as required by the Act of Congress of August 3, 1882, and are presented herewith, and that deponent's information and belief as to the other charges herein are based upon messages received by cable from His Majesty's Secretary of State for Foreign Affairs, one of the said messages enumerating the charges as herein stated, and a message received by cable by deponent from His Majesty's said Secretary of State, on
14 the 28th inst., stating that the further papers in support of the charges herein were dispatched to deponent by the mail of the 28th inst.

PERCY SANDERSON.

Subscribed and sworn to before me this 31st day of March, 1903.

THOMAS ALEXANDER,
U. S. Commissioner for the Southern District of New York, and Commissioner
15 duly authorized by the District Court of the United States, for the Southern District of New York, and also a Commissioner appointed under the laws of the United States concerning the extradition of fugitives from the justice of a foreign government under a treaty or convention between this and any foreign Government.

16 That thereupon a warrant was issued by the said Commissioner, a copy of which is as follows, together with the endorsements thereon by the United States Marshal and Commissioner Alexander:

17

The President of the United States to any Marshal of the United States; to any Deputy of any such Marshal, or any or either of them:

Whereas, complaint has been made on oath under the Treaty between the United States and Her Majesty, the late Queen of Great Britain and Ireland, concluded and signed at Washington, on the 9th day of August, 1842, and of the Supplementary Treaty between the same High Contracting Parties, signed 18
July 12th, 1889, before me, Thomas Alexander, one of the Commissioners appointed by the District Court of the United States for the Southern District of New York, and also Commissioner especially appointed to execute the Acts of Congress, entitled, "An Act for "Giving Effect to Certain Treaty Stipulations, between "This and Foreign Governments for the Apprehension "and Delivery of certain offenders," approved August 12th, 1848, and of the several acts amendatory thereof, that one Whitaker Wright, did heretofore and in or 19
about the month of October, 1899, and in or about the month of December, 1900, in the City of London, in that part of the United Kingdom of Great Britain and Ireland, called England, and within the jurisdiction of His said Britannic Majesty, commit the crime of fraud as a director of a Company, to wit: did heretofore and and in or about the month of October in the year 1899, and in or about the month of December, 1900, at the City of London, aforesaid, then being a director and manager of a certain company or body corporate, to 20
wit, the London and Globe Finance Corporation, Limited, unlawfully make, circulate and publish, and concurred in making, publishing and circulating certain written statements of accounts, viz.: annual reports, balance sheets and statements of accounts of said company or corporation for periods ending on the 30th day of September, in the year 1899, and on the 5th day of December, in the year 1900, which were false, and

which he then knew to be false, in material particulars, with intent thereby to deceive and defraud members, shareholders and creditors of said company or corporation, and with intent to induce persons to become shareholders in the said company or corporation, and to entrust and advance property to said company or corporation, and to enter into security for the benefit thereof; and did also, at the times and places aforesaid, then being a director and manager of said company or corporation, as aforesaid, with intent, to defraud, alter and falsify, books, papers and writings belonging to the said company or corporation, and made and concurred in the making of false entries, and omitted and concurred in omitting material particulars in books of account and other documents belonging to the said company or corporation; and did also at the times and place aforesaid, then being a director of the said company or corporation, as aforesaid, alter and falsify books, papers and writings, and made and was privy to the making of false and fraudulent entries in the books of account and other documents belonging to the said Company or corporation, with intent to defraud and deceive shareholders and creditors of said Company or corporation, and other persons; and that the said Whitaker Wright is a fugitive from the justice of the Kingdom of Great Britain and Ireland, and is now within the territory of the United States, and that the crime of which the said Whitaker Wright is herein charged is an offence within the Treaty between the United States and Great Britain, and is made criminal by the laws of both countries.

Now, therefore, we command you forthwith to take the said Whitaker Wright, and bring him before me, the said Commissioner, at my office, Room 60, in the Post Office Building, in the City of New York, in order that the evidence of the criminality of the said Whitaker Wright, may be heard and considered, and if deemed sufficient to sustain the charge that the same may be certified together with a copy of all the pro-

ceedings to the Secretary of State, that a warrant may issue for the surrender pursuant to the said treaty.

Witness my hand and official seal the 31st day of March in the year 1903.

THOS. ALEXANDER,

U. S. Commissioner for the Southern District of New York and Commissioner duly authorized by the District Court of the United States, for the Southern District of New York, and also Commissioner appointed under the Laws of the United States concerning the extraditions of fugitives from the justice of a foreign government under a treaty or convention between this and any Foreign Government.

[SEAL.]

The within writ was received March 31st, 1903, and the same was executed by arresting the within-named Whitaker Wright, on March 31st, 1903, and I now produce his body before Comr. Alexander as therein commanded.

WM. HENKEL,
U. S. Marshal for S. D. N. Y.

March 31st, 1903.

Prisoner arraigned, examination demanded and set for April 8th, 1903, at 2 P. M., prisoner committed to custody of Marshal.

THOS. ALEXANDER,
U. S. Comr.

N. Y., March 31, 1903.

29 Hearing adjourned to April 15th, 1903, at 2 P. M.
N. Y., April 8th, 1903.

THOS. ALEXANDER,
U. S. Comr.

Hearing adjourned to April 23rd, 1903, at 2 P. M.
N. Y., April 15th, 1903.

THOS. ALEXANDER,
U. S. Comr.

30

That the said appellant, Whitaker Wright, was arrested under the said warrant of March 31, 1903, and arraigned before Commissioner Alexander on that day, and an examination demanded by the appellant which was set for April 8, 1903. The deponent at that time (March 31), before the Commissioner, stated that the demanding Government would abandon all further proceedings instituted under the complaint in the proceed-
31 ings instituted under the complaint in the proceedings for the extradition of Whitaker Wright, dated March 16, 1903, and that the demanding Government consented to the discharge of the prisoner from arrest under the warrant issued on the complaint of March 16, 1903.

That on April 8, 1903, a similar statement was made on behalf of the demanding Government that it abandoned all proceedings under the complaint of March 16, and consented to the discharge of the ap-
32 pellant under that warrant.

That annexed hereto and hereby made a part of this affidavit, is a copy of the Stenographer's Minutes of the proceedings before Commissioner Alexander from the time of the entry of the order dismissing the writ of *habeas corpus* to April 15, 1903, and also affiant has a copy of the Stenographer's Minutes of the proceedings before the Commissioner on both complaints of March 16th and March 31st, certified to by the said Commis-

sioner which he has here ready to present to this Honor- 33
able Court for its consideration.

That the demanding Government is still willing and consents to the discharge of the appellant from custody under the warrant of March 16, 1903.

That this affidavit is made and presented to this Court by the affiant as counsel for the appellee for the sole and express purpose of advising this Court that all proceedings have been abandoned by the demanding government under the complaint and warrant of March 16th, and that all further proceedings are had under and by 34
virtue of the complaint and warrant of March 31st, 1903, and not otherwise. And further affiant saith not.

CHAS. FOX.

Subscribed and sworn to before me this
22nd day of April, in the year 1903.

HENRY H. MCCORKLE,
[SEAL.] Notary Public. 35
New York Co.

36

37

Copy of stenographic minutes referred to in the foregoing affidavit.

In the Matter

OF

The application for the extradition of WHITAKER WRIGHT, under the
38 Treaty between the United States and Great Britain.

Proceedings before COMMISSIONER ALEXANDER, in the United States Court House and General Post Office Building, in the City of New York, March 31, 1903.

PRESENT:

39 THE PRISONER.
MR. CHARLES FOX, for the demanding government.
MR. LOUIS MARSHALL and MR. UNTERMYER, for the prisoner.

The prisoner arraigned.

Examination demanded and set for April 8, 1903.

On behalf of the demanding government, it was announced that it would abandon the proceedings instituted under the complaint dated March 16, and that it consented to the discharge of the prisoner from arrest
40 under the warrant dated March 16, and would proceed under the complaint sworn to before the Commissioner and dated March 31, upon which complaint a warrant had been issued by the Commissioner to-day.

The Commissioner announced that, as the proceedings under the warrant of March 16th had been carried into the Circuit Court by writ of certiorari, he is without power to discharge the prisoner under such warrant.

The demanding government announces that an order was entered on March 30, 1903, dismissing the writs of certiorari and habeas corpus and remanding the prisoner to the custody of the marshal. 41

Counsel for the prisoner states that papers are being now prepared, on behalf of the prisoner, for the purpose of removing the case to the Supreme Court of the United States, and that an application is to be made to that Court to advance the cause to a speedy hearing.

The Commissioner announced that, pending such proceedings, the Commissioner is without power to dismiss the complaint and discharge the prisoner. 42

Proceeding adjourned to April 8, 1903, at 2 P. M.

NEW YORK, April 8, 1903.

PRESENT:

THE PRISONER. 43
MR. FOX for the demanding government.
MESSRS. MARSHALL and UNTERMYER, for the prisoner.

Mr. Marshall announces that an appeal has been allowed to the Supreme Court of the United States by Judge Lacombe, whereby the questions involved on the hearing on the writs of habeas corpus and on the certiorari proceeding referred to at the last session, are to be reviewed by the Supreme Court of the United States; that citation has been duly issued and has been served; petition for appeal has also been served upon Mr. Fox, counsel for the demanding government, and that a motion has been made, returnable before the Supreme Court on the 13th day of April, for a ruling or order advancing the cause and setting it down for a prompt hearing. 44

Mr. Fox renews his motion for the discharge of the prisoner under the warrant issued on the complaint of

45 March 16th, and repeats his announcement that the demanding government do not proceed further under that warrant or complaint. And, further than that, the proceeding cannot remain open except at the instance of the demanding government, and that the demanding government cannot legally proceed under the complaint and warrant of March 31st until the other proceeding is ended and terminated.

The motion to dismiss the prisoner under the warrant of March 16th, is again denied for the lack of
46 power on the part of the Commissioner, and, in view of the position of counsel for the prisoner and the waiver by them of any objections to proceeding by reason of the pendency of the proceedings under the writ of error, the Commissioner announces that the demanding government should proceed with its case.

MR. MARSHALL: Of course, I am not in any way conceding or admitting that there is any crime charged in the complaint or warrant now before you, which is extraditable. I merely say that I do not object to pro-
47 ceeding under the present warrant on the ground that there is pending in the Supreme Court of the United States the proceeding for the review of the other proceeding. Of course, I shall move to dismiss these proceedings also.

MR. FOX: Then I ask, if counsel has any motion to make as against that complaint, to make it now.

MR. MARSHALL: I will make it now. I move to dismiss the complaint in this matter on the ground that the complaint does not state sufficient facts to constitute
48 any crime which is extraditable within the meaning of any of the treaties between the United States of America and the United Kingdom of Great Britain and Ireland. Second, that there is no allegation or statement in the complaint which indicates that the offence charged in this complaint or warrant constitutes a crime under the laws of both countries, viz., the United States of America and the United Kingdom of Great Britain and Ireland. Third, on the ground that it does not

appear from the complaint or warrant that the crime charged is a crime under the general law of the United States. Fourth, on the ground that the complaint does not show that the offence charged against the defendant is a crime within the laws of the State of New York. I believe that covers it. 49

Motion denied.
Exception taken.

MR. FOX: The demanding Government offers in evidence the information and complaint of the Senior Official Receiver in Companies Liquidation of the London and Globe Finance Corporation in liquidation, acting under the order of the High Court of Justice, and the depositions of Arthur Russell and John Flower, George Jarman and H. G. Abraham, and the Exhibits attached to the depositions which are certified under the Act of August 3, 1882, by the Ambassador of the United States of America. And attached to those papers there is a copy of a warrant dated March 11, 1903, for the apprehension of the accused for the offence charged. 50 51

The right of the defendant to make objection to these papers, after an opportunity to examine the papers, is reserved.

MR. FOX: I offer a certified copy of an order of Mr. Justice Buckley of the High Court of Justice, ordering this prosecution, and certified in the same way by the Ambassador. 52

The right of the defendant to object to the paper is also reserved.

MR. FOX: I offer in evidence information and complaint and the depositions of the Senior Official Receiver in Companies Liquidation acting under the order of the High Court of Justice, and the depositions of Arthur Russell, Frederick Davey, William John Hiam,

53 John Flower, and John Willis, and A. Pentin and Benjamin Nicholson and Albert Edward Flower.

The same right of objection is reserved to the defendant.

MR. FOX: Those are the papers that we have to-day. Now, I am inclined to believe that the other depositions coming are merely cumulative. I ask for an adjournment, and I will introduce the laws and complete my case next Wednesday, so far as I am advised at
54 present.

Examination adjourned to Wednesday, April 15th, at 2 P. M.

55

56

FILE COPY.

Office Supreme Court U. S.
FILED
APR 27 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States,

OCTOBER TERM 1902.

No. 661.

WHITAKER WRIGHT,
Appellant,

vs.

WILLIAM HENKEL, United States Marshal for the Southern District of New York, and others.

UNITED STATES OF AMERICA,
State of New York, } ss.
COUNTY OF NEW YORK,

WHITAKER WRIGHT being duly sworn says: I am the appellant named in the above entitled proceeding now pending in this Court.

I am a citizen of the United States and now am and have been ever since March 15th 1903 confined in the County jail in the County of New York in custody of the United States Marshal for the Southern District of New York.

The complaint upon which the warrant was issued was made by Sir Percy Sanderson, His Brittannic Majesty's Consul General at the Port of New York, and is to the effect that in the month of December 1900 at the City of London, England, I then being a Director of a corporation known as The London & Globe Finance Corporation, did unlawfully make, circulate and publish certain reports and statements of the ac-

counts of said corporation which were false; that I well knew such reports and statements to be false and that they were so circulated and published with intent to deceive and defraud the shareholders or members of the corporation.

In that connection it is also charged that I am a fugitive from the justice of the Kingdom of Great Britain & Ireland.

I am informed and believe that the complaint now before this Court is not the one upon which I was originally arrested, but that after my arrest it was abandoned and superseded on March 16, 1903, by the complaint now before this Court and subsequently on the 31st day of March 1903 which was more than two weeks after my arrest and arraignment under the warrant here in question and after I had offered bail and had been refused by the Commissioner, on the ground of want of power, and my application to be discharged on the ground that the offense charged was not extraditable had also been refused by the Commissioner, another complaint was lodged against me and another warrant issued.

This was all subsequent to the decision of the United States Circuit Court here under review dismissing the writ of *habeas corpus* and after these proceedings had been taken.

I am advised and believe that the complaint of March 31st presents the same questions of law as those raised by the present record. The Commissioner before whom the proceedings are pending apparently takes the same view, as will appear from the minutes of the proceedings that have been had before him within the past ten days, extracts from which are hereto attached marked "A" which I ask to be regarded as embodied in this affidavit as part thereof

I have now been confined in jail for upwards of about six weeks and the Commissioner before whom the proceedings of March 31st are pending has, against my protest, refused to proceed with the hearing until the determination of the present appeal

If this Court should decline to review the questions of law raised by the record because of the subsequent complaint made against me which I am advised presents the same questions of law, it will be impossible for me to secure a review of those questions until after the Summer vacation and as a result I shall be compelled to suffer seven months or more of imprisonment without a hearing.

I am innocent of the charges made against me.

The facts with respect to my connection with the London & Globe Finance Corporation are briefly as follows :

I was the prime mover in the organization of that Company in 1897. It was formed with a capital of £2,000,000 to acquire certain mining claims, options, properties and shares that had been owned by the West Australian Exploring and Finance Corporation and a company also named the London & Globe Finance Corporation. The purpose of the company was to engage in the highly speculative business of acquiring prospects and undeveloped mining properties and of buying, selling and dealing in mining and other shares on the stock exchange and otherwise.

I was a Director of that corporation from the time of its organization until December 28th 1900 at which time it was placed in the hands of Voluntary Liquidators. Subsequently, the Liquidators were superseded by the Official Receiver under an order of the English Courts in a proceeding for the compulsory winding up of the corporation.

Its collapse was brought about by a speculation in the purchase of the shares of a valuable mining property known as the Lake View Consols Company the shares of which were being purchased on an agreement with a responsible syndicate to loan £1,500,000 toward paying for the shares so to be purchased. The syndicate made the first advance of £500,000 but defaulted on the further payments.

As a result of the failure of the London & Globe Corporation, two other companies that were allied with

it in the same line of business known as the British America Corporation with a capital of £1,500,000 and the Standard Exploration Company with a like capital were also forced into liquidation.

Following the collapse of these companies there was a full public investigation of all their affairs and particularly of all the business and transactions of the London & Globe Corporation about a year and a half ago & after the affairs of the corporations with which I was connected had been fully investigated by the Official Receiver and a committee of creditors, there was a public examination under the Companies Acts at which I was subjected to cross-examination by the Official Receiver on behalf of the Government and by counsel representing various of its creditors and shareholders, covering four days, and in connection with which many witnesses were examined on other days. The questions and answers and all the proceedings were widely published in the daily papers which contained *verbatim* reports of the testimony. In the course of these proceedings I was fully inquired of and made answers concerning all the transactions, statements and accounts that formed the subject matter of the complaint on which I am now deprived of my liberty.

The Official Receiver whose duty it was to prosecute me if any criminal offense had been disclosed either by his investigations through his accountants or otherwise or by the public examination, took no action as the result of the investigations or of such public examination.

Under the English law as to corporations of this character it is permitted to any person interested in the affairs of the corporation to institute criminal proceedings on behalf of the Crown in evidence that a crime against the People has been committed. Such an application was made and pressed through eminent counsel who submitted a mass of documents in support of their contention. The Public Prosecutor however, refused to prosecute on the ground that there

was no proof of the commission of a criminal offense. The Attorney General who is one of the Cabinet Ministers of the Government was also appealed to and he too declined to direct a prosecution. The question whether or not there should be such a prosecution was then raised in the House of Commons and was the subject of debate between the opposing political parties. The Attorney General, the Solicitor General, and the Prime Minister all took the position that the acts complained of did not constitute a criminal offense which would justify the People in instituting a prosecution and that they were within the law. The Government was sustained in its position.

Attached hereto marked "Exhibit B" is an excerpt from the affidavit of the Official Receiver which was submitted on the application before Mr. Justice BUCKLEY, which I believe correctly states the proceedings that preceded the application for a private prosecution. The chief agitator in favor of criminal prosecution against me arising out of the failure of the London & Globe Corporation was Mr. John Flower, a member of a firm of stock brokers in London, who were creditors of the corporation. I refer to a circular issued by him, a copy which is here to annexed and marked Schedule C. After the failure of the Corporation I had applied the remains of my private fortune earned in other enterprises, toward the payment in full of my individual obligations and had discharged among other debts that of Mr. Flower's firm to the amount of nearly £50,000. When Mr. Flower had failed in his numerous attempts extending over two years to induce public officials to proceed against me, application to Mr. Justice BUCKLEY was made under a provision of the Companies Acts permitting a private prosecution with the assent of the Court. I had no notice of that application; the law required none to be given me. I was not represented by counsel and my English Counsel has thus far been unable to secure access to the exhibits that were before the Court on that application. He has made

application but has been denied on the ground, as I am informed and believe, that the proceeding was *ex parte*, secret in its nature, and that I was not entitled to know upon what affidavits the Judge had acted. By the courtesy of some of the parties, my counsel was able to obtain some of the earlier affidavits, including that of the Official Receiver above referred to.

The charges made against me are four in number. They may be briefly summarized as follows :

1. That being one of the Directors of the London & Globe Corporation, I concurred in the issuance of a report or balance sheet to the stockholders for the year ended Sept. 30th 1899 containing the following item :

> " Cash at Bankers £534,555, 17 sh. 3d."

2. That I concurred in the following statement in the balance sheet of December 5th 1900 :

> " Shares held in sundry companies £2,333,632, 0 sh. 1 d."

3. That I concurred in omitting from the balance sheet of Dec. 5th 1900, liabilities of the Corporation to stock brokers amounting to £1,603,456.

4. That the balance sheet of December 5th 1900 also contained the following statement said to be false :

> " By securities realized and mining properties purchased and resold account (being balance of profit thereon after allowing for depreciation on securities held) £479,399, 15 sh. 4 d."

With respect to these charges I beg to state briefly as follows :

I am not an accountant or a book-keeper. Although I was one of the Directors of the corporation and the

Managing Director, I did not have immediate charge of the books of account. The book-keeping was complicated. We had a salaried accountant with assistants and an extensive department devoted to book-keeping. I never in fact saw the inside of any of the books during the existence of the Corporation nor inspected any of the entries in them. Besides the salaried accountants, the Corporation had a firm of Chartered Accountants who checked and investigated the accounts from time to time and whose certificate was attached to each of the statements or reports concerning which I am charged with fraud.

As to the first charge:—The amount of cash stated in the report as being in hand and at Bankers, to wit, £534,555, 17 sh. 3d., was in fact in hand and at Bankers at that time. It is true that part of it had been borrowed from allied corporations, but the liability appeared upon the other side of the account. The statement that this cash was in hand was in no sense false.

As to the second charge:—The placing of the mining shares held in other companies at £2,233,632, 0sh. 1d. was in no respect false. The balance sheet for the preceding year had advised the shareholders of the uniform method adopted by the Company from the date of its organization in 1897 of valuing the shares for the purpose of its balance sheet, namely, all shares purchased being taken at cost, and all shares acquired by promotion of subsidiary companies being taken at their par value irrespective of the fluctuating market value of these shares on the date of the balance sheet. It was in accordance with this custom that the shares were so valued at the date of the December 1900 balance sheet. It was a more reliable method of valuation with respect to speculative securities, than to arbitrarily take the price prevailing on the date of the balance sheet.

This method was never objected to by any of the shareholders at the various meetings. It often happened, as it did with respect to the shares on hand at the time of this balance sheet, that many of them were

worth far in excess of the par value. Sometimes there was no market for the shares. They were subject to violent fluctuations due to the fact that they represented speculative holdings which might become valuable or valueless over night as the result of rich discoveries or great disappointments.

The balance sheet of December 1900 now complained of, contains as part of it, as is required by the Companies Acts, the certificate of the Chartered Accountants in which certificate there occurs the following qualification :

> " Subject * * * * to the sum written off being adequate in respect of shares held in the allied companies and various other undertakings, we are of opinion that the balance sheet correctly represents the position of the Company's affairs as shown by the books. We have verified the balance of cash at the Bankers and in hand, and examined the securities, and find the same to be in order."

It should be said in this connection that in arriving at this valuation of the shares as £2,333,632, 0 sh. 1d. there was first deducted for depreciation on the securities during the year the sum of £1,383,849, 19sh. 11d. which included a sum of about £700,000 lost in depreciation in the shares of a Company known as " Lake View Consols, Limited " in connection with which there had been a large profit in one of the preceding years.

There was nothing improper or unusual in the valuation of the shares, that was adopted, and the method was adopted after enquiry as that pursued by several other leading Exploration Companies in London.

As to the third charge :—This claim that an item of liabilities of £1,603,456 was omitted from the balance sheet of Dec. 1900 is without foundation.

It appears that the Globe Corporation and the Standard Exploration Company which was one

of its allied companies working in close connection with it in the same line of business, were engaged in a joint speculative venture involving the purchase of shares of the Lake View Mine. The Boards of Directors of both companies, part of whom were the same individuals and part of the Standard Directors being different persons, formally met and agreed that the Standard Company would take over the entire account and assume all the obligations of purchase, relieving the Globe Corporation of those obligations and of the shares. Accordingly at and as of the date of the balance sheet there was very properly omitted from it a liability owing to brokers on account of the purchase of these shares, and there was also omitted from the other side of the account, the ownership of the shares, the actual and market value of which was greater than the amount owing upon them. The result of that transaction was to make the net assets of the Globe Corporation appear less than they would have been if the Standard Company had not taken over the shares.

The claim that I was privy to the making of a false report in this respect because I concurred in the omission of the liability owing the brokers on account of this purchase of shares, is based on the purely technical ground that although the Standard Corporation which was a solvent concern had assumed the obligation and taken over the shares, yet the contracts with the brokers for their purchase had been made in the name of the Globe Corporation and as the Bookers had not assented to the transfer of the liability to the Standard Corporation there was an obligation on the part of the Globe Corporation to them which should have appeared as a liability. That is the sole basis for the charge, and as before stated, I was neither the Accountant nor the Book-keeper of the Company, nor was it possible for me to keep in immediate personal touch with the multitude of transactions that were daily taking place. The Standard Corporation was amply responsible for the obligation,

which as before stated was less than the value of the shares acquired against it. Between the date of the transfer of that account to the Standard Corporation and the date of the report, there was a substantial increase in the market value of those shares, so that in that respect also the omission of the transaction because of its having been taken over by the Standard Corporation, made a less favorable showing for the Globe Corporation than if that transaction had been included. In short the liability on these shares having been transferred to the Standard, the shares themselves, an asset of greater amount than the liability, were also transferred to the Standard, and there was no fraud whatever in the transaction.

The attempt to charge this transaction against me as a crime is a fair illustration of the cruel and venomous prosecution to which I have been subjected at the hands of Mr. Flower.

As to the fourth charge :—This is based on the assertion of an alleged profit of £564,285 on 200,000 Victorian Gold Estates shares of £1 each.

It is claimed that these shares which had been regarded by the London & Globe Corporation as worth only £1 each, were increased in value in the balance sheet to £5 each, so far as concerned £125,000 of such shares. The fact is the mining properties of the Victorian Gold Estates were sold to two corporations, one known as Loddon Valley Gold Fields and the other as Moorlort Gold Fields, with £5 shares.

The old Victorian Company had no working capital and was otherwise in a crippled condition. Its shares were of the par value of £1 each. The shares of the new companies were of the par value of £5 each and were in companies the properties of which had been developed and which had working capital. These shares of the new companies, in accordance with the uniform custom above referred to, were placed in the balance sheet at their par value, as the old shares had been.

Between the time of the organization of the old

London & Globe corporation and the collapse in 1900 there was distributed by the corporation and its allied and subsidiary companies about £5,000,000 in dividends earned from the ventures with which it was connected. Its public issues and other enterprises had for years been almost uniformally successful so that the securities or companies with which it was identified were at a substantial premium. It did not meet with reverses until within fourteen months of its failure, and these reverses were mainly the result of treachery both at the mines and in London.

The above explanation, which covers all the charges made against me, is necessarily brief and partial as the history of these various transactions is lengthy and somewhat complicated. All of them were fully explained by me in the aforesaid public examination at which the Directors of the various companies, the book-keepers, accountants and other witnesses conversant with the transactions were called, examined and cross-examined at great length nearly a year and a half ago. All the facts now known were then known and were familiar to the Public Prosecutor, the Official Receiver and other public officials during the year or more after the public examination. I remained in England and was accessible during all that time.

It is not now and has never been charged that I profited personally by any of these transactions or that there was the slightest corruption or dishonesty on my part in dealing with the affairs of the corporation. On the contrary, at the close of the public examination, the Official Receiver admitted openly in Court and it was placed upon the record, that I was a creditor of the London & Globe Corporation to the extent of £50,000. That sum however represents but a mere fraction of my losses sustained upon the collapse of the Corporation and its allied companies. I did everything in my power, to the extent of sacrificing a large part of my private fortune which I had amassed in business enterprises prior to the organization of these

companies, in the attempt to save the companies from collapse.

The collapse was brought about as before stated, by the refusal of a syndicate of men largely responsible financially to meet their obligations, and was sudden and unexpected.

I beg herewith to submit as part of this affidavit the testimony taken on the public examination above referred to, from which will appear all the facts connected with the transactions concerning which these charges were made against me.

I am ready and able to furnish such bail as may be required for my appearance to answer in the proceedings for extradition.

Since my incarceration I have been dangerously ill but have partially recovered. I am 57 years of age and am now so weak as the result of confinement and want of exercise that at times it is impossible for me to stand and I feel my health giving way under the restraint and manner of life to which I am being subjected.

I am not a fugitive from justice but remained in England courting a full investigation of all the affairs of the Company until the examination had been concluded and the public officials had declared me innocent of fraudulent intent. Then I devoted myself toward assisting the Official Receiver in realizing the assets. It was only after all this had been done that I left England to recuperate my health and fortunes. I then went to Paris where I met many of my English acquaintances, stopped in my own name at prominent hotels, went about in the streets, and then sailed for America partly to attend to my business interests here and in British Columbia and Australia, and partly to recuperate my health.

Both personally and through my counsel I offered to return to England if the extradition proceedings were dismissed so that I might voluntarily return as a free man to meet the charges, but this has been refused. I have been advised by my friends that by reason of

the systematic attacks made upon me through the press and otherwise since my departure, and the industrious dissemination of the charge that I have fled the jurisdiction, such prejudice has been created against me in England that it would be difficult for me to secure a fair trial at this time.

It is however my intention (if the charges made against me are held to be not extraditable and the prejudice created in England as to my having fled the jurisdiction is thus removed so that I can secure a fair trial), to return to England and meet these flimsy allegations as soon as my health will permit.

From my knowledge of my physical condition and of the climate here, I do not believe I could survive the Summer in confinement.

WHITAKER WRIGHT.

Sworn to before me this 25th day of April 1903.

SIMEON G. MANHEIM,
Notary Public,
New York County.

[SEAL.]

"EXHIBIT A."

Extract from proceedings before Thomas Alexander, Esq., United States Commissioner, on April 15 and 23, 1903.

In the Matter

of

The Application for the Extradition of Whitaker Wright.

New York, April 15, 1903.

Met pursuant to adjournment.

Present:

The Commissioner.

Mr. Fox for the demanding government.

The Prisoner.

Messrs. Untermyer & Marshall, for the Prisoner.

Mr. Untermyer: Do I understand counsel closes his case?

Mr. Fox: You do not understand that at this point, because I understand this case is to be held open until the decision of the Supreme Court, under the ruling of the Commissioner at the last hearing.

Mr. Untermyer: Do I understand that there was such a ruling?

Mr. Fox: If there is anything in the ruling of the Supreme Court which it becomes necessary for us to meet, we shall want to do so.

The Commissioner: I do not wish to have the case finally submitted to me until the Supreme Court finally rules upon the question before it.

MR. MARSHALL: You stated you would not make a final decision until the case was passed upon there, at the last hearing?

THE COMMISSIONER: I do not wish to have the case finally submitted to me until then, either.

MR. UNTERMYER: If your Honor please, I understand you made some suggestion at one of the previous hearings to the effect that you would not close this case until the decision of the Supreme Court.

THE COMMISSIONER: That is right.

MR. UNTERMYER: I am going to ask you to listen to some reasons which I shall present to you to be considered on that determination, and I think the reasons will appeal to you as being well founded. In the first place, of course, the defendant here has not been permitted to be bailed. He is in custody, and I think he is entitled to a speedy opportunity to have any questions that may be raised in connection with this extradition, determined. In the second place, I assume that your reason for coming to that conclusion was because of the fact that the question of law involved here may be presented to the Supreme Court and there determined. That is, the question of the extraditability of this offense.

THE COMMISSIONER: Partly that, but largely because the Commissioner feels that, without the consent of the attorneys for the defense, he has no authority to proceed in this case, pending that appeal.

MR. UNTERMYER: On this particular charge?

MR. MARSHALL: We insisted on this examination.

THE COMMISSIONER: Yes, and therefore I proceeded for the purpose of enabling the defense to have a full disclosure of the complainant's case and thus save time.

MR. UNTERMYER: May I inquire on what theory it may be contended that there is no jurisdiction to proceed with this case upon the writ of error on another charge.

THE COMMISSIONER: For the reason that when the *habeas corpus* was issued in the other case, the marshal

brough the prisoner before the Supreme Court, took him out of my charge entirely, and the vacating of that writ, had it not been stayed, as I claim, by the appeal, would have returned him to me. But there having been an appeal taken, I am very strongly of the opinion that the prisoner is not properly before me.

MR. UNTERMYER: He is in the jurisdiction of the Supreme Court still?

MR. MARSHALL: He was rearrested and came before you on a new charge.

THE COMMISSIONER: That may be sufficient to hold him in case the Supreme Court should sustain the writ and dismiss the prisoner, but I do not consider it is proper for the Commissioner at this stage of the proceeding, to proceed with the trial of the case. If I should make a final decision of the matter and discharge the prisoner, it would not be in my power to discharge him at the present time.

MR. UNTERMYER: That would raise another question, but we are here before you apparently by consent upon this charge.

THE COMMISSIONER: Simply for the purpose of getting the evidence before you so that you will not waste time after the determination of the matter before the Supreme Court, but will have the demanding Government's full case before you at that time and be prepared to meet it.

MR. UNTERMYER: We have felt and supposed and hoped that the defendant was before you for every purpose, so that we can get from you a determination of the proposition that may not be determined by the Supreme Court.

THE COMMISSIONER: Before directing the demanding Government to proceed with the case I informed you that I would not make any final determination of the matter, and I still hold to that view.

MR. UNTERMYER: Do you hold the view that the prisoner is not properly before you, and that the proceeding is irregular?

THE COMMISSIONER: In view of your waiver the prisoner is before me, I suppose.

MR. UNTERMYER: But did not we waive for every purpose then?

THE COMMISSIONER: No. I think there is something you cannot waive, and that is the fact that the prisoner is before the Supreme Court of the United States now.

MR. UNTERMYER: What we are anxious to reach, is a result, a determination by you of this question of law whether it is extraditable on the evidence subsubmitted by the demanding Government.

THE COMMISSIONER: That I will not determine until the Supreme Court acts on the question now before it.

MR. UNTERMYER: And I understand, for the reason you do not consider the prisoner as before you.

THE COMMISSIONER: And for the reason that a material point in this case on this complaint, is involved in the case before the Supreme Court.

MR. UNTERMYER: If that is so, then I quite agree that is a sufficient reason, but suppose the gentleman on the other side goes before the Supreme Court and takes the position that the raising of that question before the Court now is premature.

THE COMMISSIONER: I cannot consider what questions he will raise.

MR. UNTERMYER: Do I understand that any such position is to be taken, because it would not be fair to say to the Commissioner, we do not want you to pass on this question because it is before the Supreme Court, and then say to the Supreme Court that the raising of the question in the present proceeding is premature.

MR. FOX: That is a matter you have taken up.

Mr. UNTERMYER: We have not taken up the question that we shall not have a ruling now by the Commissioner upon the question of the extraditibility of this offense. If we are going to have a ruling of the Supreme Court on Monday and the question is going to be fairly submitted, as a great government should submit

a question of that kind, to the Court, that is one question. If, however, we are going to be met with a lot of technicalities on that subject, and have this proceeding held up and that proceeding held up, then I say we are subjected to a form of treatment that ought not to be encouraged. There is a position I want clear, and I do not think in a governmental proceeding of this kind any such technicality should be thrown in the way of a square determination of the great question at issue.

Now, may I ask, Mr. Commissioner, if your hesitation to hear us now on the question of the extraditibility of the offense, is based upon the ground that that is to be presented to the Supreme Court?

THE COMMISSIONER: I wish to have any light the Supreme Court can throw on that subject.

MR. UNTERMYER: Will you then inquire of the counsel representing the Government, whether they propose to present that question?

THE COMMISSIONER: No, I will not. I consider the complaint is before the Supreme Court, and when they act I will be in a position to decide.

MR. UNTERMYER: Which is practically the question of bail.

THE COMMISSIONER: It was fully argued in the Court below.

MR. UNTERMYER: It was presented below and we hope it will be in the Supreme Court, but I think the other side should say that question is going to be presented, without objection there, or present it here. We are entitled to have it presented somewhere at some time.

THE COMMISSIONER: I do not wish to consider it now at all.

MR. UNTERMYER: Mr. Commissioner, we very respectfully insist that we are entitled to have a hearing and determination upon the extraditability of this offense upon the proofs submitted by the complainant. As we understand it, the complainant has now closed its case.

MR. FOX: No, we reserve the right to introduce any additional evidence.

MR. UNTERMYER: I have not understood the Commissioner to grant any such right, and I do not suppose any such right would be granted unless counsel indicates what is their proof proposed to be submitted, and when, and why, in all the weeks that have transpired while this proceeding has been pending, the proof has not been submitted. Now, I am sure counsel does not want to resort to anything in the nature of pretext.

MR. FOX: Certainly not.

THE COMMISSIONER: I understand Mr. Fox to say so far as he knew his case was submitted.

MR. UNTERMYER: Are not we entitled to know whether his case is submitted or not? Somebody must know.

MR. FOX: As this case was taken up at the suggestion and the demand, I might say, of the accused we were directed to proceed although there were certain reasons that appeared to us which might make it a little questionable. Notwithstanding that we were directed to proceed, and we have proceeded, under the ruling of the Commissioner when we were notified that after we had he would do nothing until the opinion of the Supreme Court of the United States, and that he would not take the case for final submission until that time.

MR. UNTERMYER: Ruling on what, Mr. Fox?

MR. FOX: When I say "his ruling," his announcement we will put it. Now the counsel has taken this case to the Supreme Court. He has that right and nobody objects or criticises in the slightest. Now, if he is able to obtain from the Supreme Court a decision sustaining his views, it may be accompanied with some qualifications and suggestions from that great Court that will make it necessary for us to introduce other proof, and as the case is not to be decided until that decision, I cannot see how the accused is prejudiced in the slightest degree.

MR. UNTERMYER: I do not think we have had a

definite reply to the suggestion. We want to know whether counsel has submitted his proof. I think we are entitled to have the case closed, or to have a good reason why it is not closed.

THE COMMISSIONER: I understand Mr. Fox to say he considers his case closed unless something he knows not of, occurs.

MR. UNTERMYER: Then, as at present advised, as I understand it, the complainant's case is closed. That being so, Mr. Commissioner, we very respectfully insist that, upon the proof submitted, the offense is not extraditable and we ask you to dismiss the proceeding.

THE COMMISSIONER: The Commissioner again refuses to consider that question until the opinion of the Supreme Court is announced upon the matter now pending before it.

MR. UNTERMYER: Is that on the assumption, even at the expense of appearing persistent, if I may inquire, that the question of the extraditability is going to be determined by the Supreme Court?

THE COMMISSIONER: I do not know that you are justified in making any such assumption from what I have stated. The Commissioner simply states that he wishes such light as the Supreme Court may furnish him by its opinion in the matter submitted to it, before taking this matter up for final action.

MR. UNTERMYER: Then you decline to hear us upon the question of extraditibility at the present time?

THE COMMISSIONER: I do.

MR. UNTERMYER: We except. What else is to be done? We are in rather a quandary. We do not know what is to be done. We are ready and anxious to be heard.

THE COMMISSIONER: If you are desirous of putting in evidence, I suppose I could receive it, although I think it would be much better to wait until a determination of the matter now before the Supreme Court. My understanding was when I directed these gentlemen to proceed, that they were simply to give to you their case so that there would be no time wasted in

the Government making its case, when this matter was determined.

MR. UNTERMYER: I understand the present status of this proceeding to be somewhat as follows: The complainant has closed its case. The defendant wants to be heard upon an application to dismiss the warrant and be discharged, and the Commissioner declines to hear the defendant on that proposition now, or to make any ruling on it at this stage. Of course, until that has been ruled upon, we can go no further.

THE COMMISSIONER: The Commissioner has made a ruling upon it and refuses to receive the case in submission at the present time on the complainant's case.

MR. UNTERMYER: Carrying out that line of action, what does the Commissioner propose to do with the case?

THE COMMISSIONER: Adjourn the case until the Supreme Court has decided the matter now before it.

MR. UNTERMYER: That might be for months. That might carry it over until next Autumn by a division of the Court, and this defendant remain in jail all that time.

THE COMMISSIONER: That is the position your action has placed the defendant in.

MR. UNTERMYER: We certaintly had a right to raise the question by *habeas corpus* and to go to the Supreme Court. Now they have put in another complaint. It is their action that has placed the defendant in that position. They have a man arrested upon a complaint, and when we seek to raise the question of the sufficiency of the complaint before the Courts, they take out another warrant and make another charge. I do not quite see how it is our action. I can quite see how it is theirs.

THE COMMISSIONER: As long as the proceeding is pending in the Supreme Court, the prisoner cannot complain of being restrained in jail by this proceeding. It is the proceeding in Washington, in the Supreme Court, under which he is directly held under arrest.

MR. UNTERMYER: Then, as I understand the posi-

tion, the Commissioner adjourns this proceeding without date.

THE COMMISSIONER: No, I do not. You expect this case to be argued on Monday, I understand.

MR. UNTERMYER: Yes.

THE COMMISSIONER: I think by Wednesday of next week you would have something definite to communicate.

MR. FOX: May I be heard? Do counsel propose to introduce any proof, and I ask that more particularly in the event of the motion to dismiss upon our papers being denied, because I can understand if the motion should be granted it would not be necessary to introduce any.

MR. UNTERMYER: I am afraid at this particular stage of the proceeding we are not able to answer. We have not really conferred, as yet, and reached a conclusion upon that subject.

Now the defendant's counsel ask that the defendant be admitted to bail upon the charge now under examination—namely, under the warrant of March 31, 1903, in such sum as the Commissioner may fix, the defendant being prepared to furnish bail.

THE COMMISSIONER: The Commissioner denies the application, for want of power.

Examination adjourned to Thursday, April 23, 1903, at 2 o'clock P. M.

NEW YORK, April 23, 1903.

Met pursuant to adjournment.

Present:

THE COMMISSIONER,
THE PRISONER,
MR. UNTERMYER, for the prisoner,
MR. FOX, for the demanding government.

Mr. Untermyer states that he is prepared to proceed, as stated at the last session, and asks that the hearing proceed.

The Commissioner rules that as the matter pending in the Supreme Court is in the same condition that it was at the last session, he cannot proceed at present.

Mr. Untermyer renews the application to now proceed with the hearing, on all the grounds that were stated at the last session, which, with the permission of the Commissioner, are deemed to be here repeated and embodied in the record, and he protests against the postponement.

The Commissioner makes the same rulings as appear by the minutes of the last session, and adjourns the proceeding to Tuesday, April 28th, 1902, at 2 o'clock., to which Mr. Untermyer excepts.

Exhibit B.

Affidavit of George Stapylton Barnes, Senior Official Receiver, Verified February 27, 1903.

Filed 10. Mar. 1903. No. 00277 of 1901.

IN THE HIGH COURT OF JUSTICE.

COMPANIES WINDING-UP.

MR. JUSTICE BUCKLEY.

IN THE MATTER OF THE COMPANIES ACTS 1862 TO 1900 AND IN THE MATTER OF THE LONDON AND GLOBE FINANCE CORPORATION LIMITED.

I GEORGE STAPYLTON BARNES, Senior Official Receiver in Company's Liquidation with regard to the application of John Flower hereby report to the Court as follows :—

1. The London and Globe Finance Corporation was

ordered by the Court to be wound up compulsorily on the 30th. October 1901.

2. It thereupon became my duty to make a full enquiry into the past history of the Corporation and report the results of the enquiry to the Court and to the Creditors and Shareholders.

3. Prior to the date of the Winding-up Order I had some indirect knowledge of the affairs of the London and Globe from the fact that Winding-up Orders had been made by the Court in the case of two allied Companies viz.:—The British America Corporation Limited and the Standard Exploration Co. Ltd. the affairs of which were closely interwoven with those of the London and Globe.

4. On the 16th. December 1901 Meetings of the Creditors and Shareholders of the London & Globe were held in accordance with the Act of 1890 when the following persons were nominated and subsequently appointed by the Court to be a Committee of Inspection namely:

Nominated by Creditors:

Dr. Richardson 26, Austin Friars, E. C.
John Flower 1, Angel Court, E. C.
F. C. D. Haggard, 15, Austin Friars, E. C.
Lewis Powell 9, Old Broad Street, E. C.
J. W. Brigstock 5, Austin Friars, E. C.

Nominated by the Shareholders:

	No. of shares held:
F. M. Fells 85, Gracechurch Street, E. C.	212
T. W. Leslie 1, Golden Square, W.	600
T. F. Craven 69, Highbury New Park, N.	1,350

Of the members nominated by the Creditors Dr. Richardson is the Official Assignee of the Stock Exchange and in his official capacity represents defaulting members of the Stock Exchange who are Creditors to the extent of £853,690.18.2. John Flower's Firm of

James Flower & Company are nominally Creditors for £96,564.10.11 but any dividends paid in respect of their claim will be paid to Dr. Richardson for the purpose of distribution amongst the Creditors of the Firm of James Flower & Co.

F. C. D. Haggard's firm of Haggard, Hale & Pixley are in like manner nominally Creditors for £223,360.9.1. but all dividends paid in respect of their claim will in like manner be paid to Dr. Richardson for distribution amongst the Creditors of the firm.

Lewis Powell is not a direct Creditor of the London & Globe at all but is I am informed a Creditor for £3,628.11.3. against the firm of Haggard, Hale & Pixley.

J. W. Brigstock's firm of Read & Brigstock are Creditors for £28,945.10.6.

None of the Shareholders as such have any pecuniary interest in the liquidation.

5. After the Meetings of Creditors and Shareholders I issued the Statutory Summary of the Statement of Affairs and observations covering the whole history of the Company and dealing in detail with the Balance Sheet of the 5th December 1900 I attach a copy of the printed observations issued by me to the Creditors and Shareholders and dated 31st December 1901.

6. In accordance with the provisions of Section 8 of the Companies Winding-up Act 1890 I made and filed with the Court a preliminary Report and a further report dated respectively the 18th. and 19th. December 1901, both of which are on the Court file. In the further Report I expressed the opinion that fraud had been committed in the conduct of the Company's business to which the persons named in the Schedule were parties such persons being Whitaker Wright and H. A. Malcolm and David Anderson the two latter being the principal and Assistant Accountants of the London & Globe Finance Corporation.

7. The further Report came before Mr. Justice WRIGHT for consideration in January, 1902, and he

made an Order for the Public Examination of the persons named in the Schedule to the Report.

8. With regard to the Order for the Public Examination of Malcolm and Anderson an application was made by them to the Judge to have the order set aside. No order was made on that application but the Judge suggested that they should be examined in open Court under Section 115, a course to which Malcolm and Anderson assented. The following persons being Directors or Officers of the Company were also examined under Section 115, namely, Lord Edward Pelham Clinton, Lieut.-Genl. The Honourable Somerset J. Gough-Calthorpe and R. E. Leman, George Worters and D. J. Ford (a member of the firm of Ford, Rhodes & Ford), voluntarily attended to give evidence and were examined. The Public Examination of Whitaker Wright and the examinations of the other persons named above were held on the 13th, 14th, and 20th January and the 11th and 25th of February, 1902.

9. Directly the examinations were concluded a detailed memorandum on the case prepared in the Solicitor's Department of the Board of Trade on materials supplied by me was forwarded by the Board of Trade with all necessary papers to the Director of Public Prosecutions for his consideration.

10. At this time a civil action entitled "London & Globe Finance v. Montgomery" in connection with a large Stock Exchange operation in the shares of the Lake View Consols was pending. This action had been instituted on behalf of the London & Globe by the Voluntary Liquidators prior to the compulsory Winding-up Order and was expected to be heard shortly. The Director of Public Prosecutions after considering the matter decided to defer the question of prosecution until after the hearing of the civil action in order that all possible material for forming an opinion might be before him.

11. Immediately after the hearing of the action all the papers in the matter including my observations

the shorthand notes of the Public Examination and of the other Examinations and the printed shorthand notes of the action in the London & Globe v. Montgomery were submitted by the Director of Public Prosecutions to the Attorney General for his directions and the prosecuting Counsel to the Treasury were instructed to assist the Attorney General.

12. During the summer of 1902 there were many consultations held with the Attorney General and Prosecuting Counsel to the Treasury the Solicitor General also being present I was invited to these consultations in order to give such assistance as I could as to facts and I believe that I was present at all of them. Eventually in July the Attorney General gave directions that the case was not one in which the Public Prosecutor ought to institute criminal proceedings.

13. In the month of November last some Affidavits were forwarded by John Flower to the Director of Public Prosecutions and by him laid before the Attorney General. There was a long consultation (at which I was present) with regard to these affidavits and eventually the Attorney General came to the conclusion that there was no new matter which would justify him in coming to a conclusion different to that arrived at in the previous July.

14. On the 13th February last a Meeting of the Committee of Inspection was held at which the following members were present viz:—John Flower, T. W. Leslie, L. Powell, Dr. H. L. S. Richardson. After considering the pending application of John Flower the following Resolution was passed unanimously by the Members of the Committee present.

> "That in the opinion of this Committee it is
> "desirable that a prosecution be instituted by the
> "Official Receiver and that the costs of the prose-
> "cution be paid out of the assets of the Corpora-
> "tion to such extent as other funds are not avail-
> "able."

The "other funds" referred to in the Resolution are certain moneys which John Flower informed the Committee were in course of collection by him but the amount of which he did not state.

15. Since the meeting I have ascertained the views of the members of the Committee who were not present except F. C. D. Haggard who is travelling in South America, J. W. Brigstock states that he would have voted against the Resolution. T. F. Craven states that he would have voted for the Resolution. The views of J. M. Fells are contained in a letter dated the 21st. February 1903 a copy of which is attached.

16. With regard to the assets of the London & Globe after paying a dividend of 1/- in the £ on Creditors Claims amounting to £1,665,717.10.1 there remains in my hands a balance of £78,872.16.5. Besides the claims of £1,665,717.10.1 referred to above there are claims definitely made but not admitted amounting to £421,188.2.5. There is a further question whether the British America Corporation is not entitled to prove for a sum exceeding £600,000 in addition to all the claims mentioned above. The outstanding assets of the London & Globe will not, in my opinion realize more than £20,000.

17. I have read report of Messrs. Woodthorpe Bevan & Co. and the confirmatory affidavit the report of Messrs. Goodrick Coleman & Co. and the confirmatory affidavit and the affidavit of the applicant John Flower.

The facts and figures in the Report of Messrs. Woodthorpe Bevan & Co. consist almost without exception of facts and figures contained in the observations issued by me in one or other of the allied Companies namely the London & Globe Corporation the British America Corporation and the Standard Exploration Co. I believe that all the facts and figures contained in Messrs. Woodthorpe Bevan & Co.'s report are correct.

18. With regard to the Report of Messrs. Goodrick Coleman & Co. the facts and figures have been care-

fully checked with the result that some errors have been pointed out to Messrs. Goodrick Coleman & Co. They inform me that they intend to file a corrective affidavit before the hearing of this application.

19. With regard to the affidavit of John Flower there is apparently a mistake of about a million in the 7th paragraph. The figure £397,133.6.1 should apparently be £1,397,788.6.1.

With regard to the list of shares quoted in the 7th. paragraph—some of the shares had a value on the date of the Balance Sheet although such shares had no Stock exchange quotation or market value I am not able to give the Court any reliable estimate of such values.

With regard to the other statements in the Affidavit, I do not know of any other errors but there are some facts stated which are outside my knowledge.

G. S. BARNES.

Dated this 27th. day of Febr[illegible]ary, 1903.

Exhibit C.

1, ANGEL COURT,
THROGMORTON STREET,
LONDON, E. C.

FEBRUARY 11th, 1903.

TO THE COMMITTEE AND MEMBERS OF THE STOCK EXCHANGE, AND THE CREDITORS OF THE WHITAKER WRIGHT COMPANIES.

GENTLEMEN, I beg to address you collectively, as your several interests are practically identical, the London Stock Exchange as the leading financial institution of the world being also especially concerned both in upholding the integrity of commercial dealings on behalf of the public, and in protecting its own Members from frauds from without.

In the course of the compulsory liquidations of the London and Globe, the British American, and the Standard Exploration Companies, the Committee of Inspection of the London and Globe became so profoundly impressed with the conviction that it was a proper case for instituting criminal proceedings against the persons answerable for the management of those Companies, that by the courtesy of the Senior Official Receiver in Companies' Liquidation they were permitted to pass the following Resolution :—

> "*Resolved* :—That the falsification of accounts and balance sheet of the London and Globe Finance Corporation, Limited, are of such flagrant character, and have caused such widespread and enormous losses to shareholders and creditors, as to threaten the well-being of the commercial community unless the parties responsible are brought to trial ; this Committee of Inspection therefore respectfully asks the Official Receiver to request the Public Prosecutor, or the proper law officers of the Crown, to take the necessary steps to effect that purpose."

The Resolution was passed unanimously.

As the Law Officers of the Crown have not considered the matter one for a Public Prosecution, it has been determined that it should be undertaken by the sufferers themselves, and a Subscription List has accordingly been opened to provide for an expenditure of £5,000, which will be sufficient for the purpose. The Issue is a simple one—the evidence has already been prepared, and the opinion of Counsel of eminence has been obtained to the effect that a prosecution would be successful.

The circumstances attending the management of the Whitaker Wright Companies and their consequent downfall are too well known to need recapitulation; but the following quotation from the recently issued

3741

Report of the Inspector General in Companies' Liquidation is instructive :—

> "The value of the gross assets in the Group (of six Companies) is estimated in the Statements of Affairs at £7,299,136; but there is no probability of that figure being even approximately realized. The Assets are of a highly speculative character, and according to the best estimates which can at present be made, their total value is not likely to exceed £1,500,000. This leaves an apparent deficit of £3,500,000, or, if the Vendors' shares be included (and many of these have been placed on the market and sold to the public at prices much beyond their nominal amount) of £7,500,000."

Besides this loss of capital, the debts of the Globe alone amount to close upon two Millions, the greater part of which has fallen on Members of the Stock Exchange, who, no doubt, in common with my own Firm, were induced to give credit to the Company on the faith of its Balance Sheets being true and correct. It is not on account of these losses, however, that I base my appeal to you to make up the comparatively small sum of £5,000 required to carry on the prosecution. It is on the far higher ground of the national welfare, which depends upon upholding the past record of the Empire for its business integrity and commercial morality. Without the protection afforded by reliable balance sheets, the confidence of the investor in Joint Stock Companies will not exist, and business in the Stock Exchange will immeasurably suffer. It would be impossible to exaggerate the importance of these vital considerations to the community at large, and in asking the Stock Exchange to give me the support I desire, either collectively as a body, or by individual guarantee, I am convinced I shall not do so in vain.

Any balance remaining in hand after the conclusion of the Prosecution will be refunded to contributors

pro rata, and proper accounts will be kept for the inspection of Contributors at any time.

I beg to enclose a Subscription Form, which should be filled up and remitted to the London and Westminster Bank, Limited, Lothbury, London, E. C., with the amount of your contribution, as soon as possible; or if preferred may be forwarded to me,

JOHN FLOWER,
Chairman of the Committee, London and Globe Prosecution Fund.

Member of Committees of Inspection—
London and Globe.
British American Corporation.
Standard Exploration Company.

THE LONDON & GLOBE FINANCE CORPORATION.

LIMITED.

IN LIQUIDATION.

TO THE COMMITTEE OF THE LONDON AND GLOBE PROSECUTION FUND, 31 WOOL EXCHANGE, COLEMAN STREET, LONDON, E. C.

I enclose {Cheque / postal order / stamp} for £

being my contribution as a (Creditor / Shareholder) towards the above Fund, and on the express terms that I do not thereby incur any liability whatsoever beyond the amount of this contribution.

Signature .....
Name of (Creditor / Shareholder) in full .....
Address .....
Description .....
Amount of Debt .....
Number of Shares in Company (if any) held .....
Date .....

3641

BANKERS' RECEIPT.

(To be detached by the Bankers.)

RECEIVED of Mr. ..... the sum of £..... as his contribution towards the LONDON AND GLOBE PROSECUTION FUND.
Dated the.....day of ....., 190...

THE LONDON AND WESTMINSTER BANK, LIMITED.

..... STAMP. .....
Cashier.

£ : :

This form to be sent entire with the amount of contribution to tne London and Westminster Bank, Ltd., Lothbury, London, E. C.

N. B.—The Committee would be greatly obliged if Shareholders would, in order to facilitate the collection of further information, fill up the following Schedule with as much detail as possible :

Questions.	Answers.
Did you receive the London and Globe balance-sheet for the period ending 5th December, 1900.	
Were you in any and if so in what way thereby deceived or defrauded.	
Were you thereby induced to become a Shareholder or to acquire further shares in the London and Globe Co., and if so to what extent.	
Were you thereby induced to entrust or advance any property or money to the London and Globe Co., or to give credit to it or to enter into any security for its benefit, if so give full particulars.	
Were you thereby induced to abstain from selling any of the Shares which you held in the Company.	

Signature.....